IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.871 OF 2005
(For Leave to Appeal)

The State of Maharashtra — Appellant
vs.
Pramod Babulal Wani & ors. — Respondents

Ms.V.R.Bhonsale, APP for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 14th February 2005

P.C.

Heard Mr.V.R.Bhonsale, the learned APP.

2. The present respondents were prosecuted for the offences punishable under Sections 147, 148 and 149 of the I.P.C. and alternatively under Section 307 read with section 34 of the I.P.C. and section 324 read with section 34 I.P.C. Upon consideration of the prosecution evidence, the IInd Additional Sessions Judge, Malegaon vide his judgment dated 22nd April 2003 acquitted the present respondents of the offences punishable under Section 307 read with section 34 of IPC and so also for the offence under Sections 147, 148 and 149 of the IPC. The first respondent (original accused no.1) has been convicted for the offence punishable under Section 324 of IPC and sentenced to suffer RI for six months and to pay a fine of Rs.500/-. The Respondents 2 to 5

(original accused nos. 2 to 5) have been convicted for the offence punishable under section 323 read with 34 of IPC and instead of sentencing them, the trial Court ordered their release after due admonition. The respondent no.2 (original accused no.2) has been directed to pay compensation of Rs.1,000/- to Harshalkumar.

3. In so far as the acquittal of the respondents the offences punishable under Section 307 read with section 34 of the IPC is concerned, the State has preferred this appeal.

4. We are only concerned with the present criminal application for leave to appeal. That the incident occurred in which Chandanmal and his son Harshalkumar sustained injuries is not in doubt. All the accused-respondents were present at the time of the incident also does not appear to be in doubt. Chandanmal sustained an injury in the left parietal region. The said injury is in the nature of lacerated wound of about 1/2"x1/2". Chandanmal also sustained injury on his right hand i.e., contusion over his right hand of about 1"x1". The medical officer opined that the injuries sustained by Chandanmal were caused by hard and blunt object. His son Harshalkumar received an injury in the abdomen region. The injury found on the

person of Harshalkumar was the punctured perforating injury over the right epigastric area. According to medical officer, the said injury was caused by sharp and cutting weapon. Having considered available material, we find that for the injuries sustained by Chandanmal and Harshalkumar, the accused persons could not have been convicted for the offence punishable under section 307 read with section 34 of IPC. That all the accused persons shared common intention to cause death of Chandanmal or Harshalkumar is not at all established from the evidence on record. Neither of the injuries sustained by chandanmal nor Harshalkumar can be said to be sufficient in the ordinary course of nature to cause death. The injury on the person of Harshalkumar was caused by original accused no.1 (present respondent no.1) by the sharp edged weapon and for the purposes of the present application, we can safely say that the original accused no.1 could not have been convicted under section 307 IPC. The original accused nos. 2 to 5 (respondents 2 to 5) also could not be fastened with the liability of the act of accused no.1 (present respondent no.1).

5. The learned IInd Additional Sessions Judge, Malegaon has taken into consideration the evidence on record and the acquittal of the present respondents of the offences punishable under section 307 read with section 34 IPC

and under sections 147, 148 and 149 of IPC cannot be faulted.

6. Before we close we clarify that the observations made by us in this order are only for the purpose of the consideration of this criminal application for leave to appeal and such observations shall not be construed as an express of opinion in the appeal that might have been filed by the present respondents challenging their conviction.

7. Criminal application is, accordingly, dismissed.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)